

Special Called Meeting of the City of Sandy Springs Board of Ethics Meeting held on May 15, 2008 at 9:00 AM

Call to Order

Chairman Maddrey called the meeting to order at 9:00 a.m.

Board Members Present: Charles Maddrey, Jim Langlais, Glenn Moffett, Nancy McCord, and Dick Isenberg.

Andrew Heyward, absent excused.

Staff Present: City Clerk Christina Rowland, City Attorney Wendell Willard, Police Chief Gene Wilson, Maj. Jamey Moore, Lt. Trudi Vaughn, Sgt. Scott Levy, and Ofc. Mark Johnson.

Also present was Councilmember Dianne Fries and Mr. Dillon Fries.

Approval of Agenda

Mr. Moffett moved to approve the meeting agenda. Mr. Langlais seconded the motion. The motion carried unanimously.

- Committee Reports
 - Recommendation to City Council for changes in Section 22 (Section 2-160 of the Codified) Ethics Ordinance – Jim Langlais

Approval of Minutes of April 9 Board Meeting

Mr. Heyward moved to approve the April 9 Board meeting minutes. Mr. Langlais seconded the motion. The motion carried unanimously.

Old Business

Review of the Fries Complaint-Wendell Willard

City Attorney Willard explained the issues in the complaint and the actions that could be taken by the Board.

Mr. Langlais stated that the Board could decide that the punishment received by Ofc. Johnson was sufficient. Lt. Vaughn explained that any ethics complaint filed on a police officer could be detrimental.

Mr. Langlais moved to recess the Board meeting. Mr. Moffett seconded the motion. The motion carried unanimously and the Board meeting was recessed.

Chairman Maddrey called the meeting back to order. He stated that the Board should decide whether or not to hold the hearing regarding the complaint self-filed by Councilmember Fries and whether or not to hold a hearing to decide if there is an ethics complaint against Ofc. Johnson.

Mr. Moffett moved that contingent upon Ms. Fries waiving any further notice of a hearing, representation of counsel, and the requirement of an official court reporter, that a hearing be conducted regarding the complaint against Ms. Dianne Fries at this time. Mr. Langlais seconded the motion. The motion carried unanimously.

Mr. Langlais moved to waive the rule that there be a court reporter present for the hearing and the requirement of a written transcript of the hearing and that the recorded transcript be sufficient for the purposes of this hearing. Ms. McCord seconded the motion. The motion carried unanimously.

Chairman Maddrey questioned if the Board would proceed with a hearing for Ofc. Johnson. Chairman Maddrey stated that he did not have a motion to proceed with a hearing for Ofc. Johnson.

City Attorney Willard questioned if Ms. Fries wishes to sign a waiver for any further notice of hearing, without presence of counsel, and without a court reporter. Ms. Fries stated that she would sign such a waiver. *See waiver attached.*

New Business-Charles Maddrey

Chairman Maddrey stated that Board alternate Susan Dew had resigned.

Review and recommendation on the Statute of Limitations, Section 22 of the Ethics Ordinance – Jim Langlais

Mr. Langlais stated that he has spoken with the Council and proposed that certain changes be made. He stated that it was suggested that there be other amendments to the Ordinance. Chairman Maddrey suggested that a recommendation be made for the next Board meeting.

Ms. McCord moved to suspend the rules and enter into a hearing session. Mr. Langlais seconded the motion. The motion carried unanimously.

Hearing on Fries Complaint dated March 21, 2008.

Chairman Maddrey opened the hearing for the self-filed complaint of Councilmember Dianne Fries dated March 21, 2008 at 10:00 a.m.

City Clerk Rowland called the roll.

Board Members Present: Charles Maddrey, Jim Langlais, Glenn Moffett, Nancy McCord, and Dick Isenberg.

Andrew Heyward, absent excused.

Staff Present: City Clerk Christina Rowland, City Attorney Wendell Willard, Police Chief Gene Wilson, Maj. Jamey Moore, Lt. Trudi Vaughn, Sgt. Scott Levy, and Ofc. Mark Johnson.

Also present was Councilmember Dianne Fries and Mr. Dillon Fries.

Chairman Maddrey appointed Mr. Langlais as the Chair to hear this matter.

Acting Chairman Langlais stated that the Board would be hearing the self-filed complaint on Councilmember Dianne Fries filed on March 20, 2008, received March 21, 2008.

City Attorney Willard explained that Ms. Dianne Fries self filed a complaint on March 21, 2008. This has been previously reviewed by the attorney's office and reports have been submitted to the Board. He stated that during a meeting held on April 8, 2008, he was directed to provide notice of a potential violation of the ethics code be sent under the Chairman's signature. This was sent out on April 11, 2008. The notice also stated that any responses

were to be filed by May 15, 2008. None were received. Mr. Willard reviewed the complaint with the Board. He stated that Section 2-151 of the Ordinance explains the reasons and procedures for hearings.

Acting Chairman Langlais called Ms. Dianne Fries before the Board. City Clerk Rowland administered the oath.

Chairman Langlais asked if Ms. Fries wanted to provide an opening statement. Ms. Fries stated that she filed this against herself because she wasn't sure. She did not think that there was any other individual involved except for herself because she was aware of the Police Department's procedures. She stated that she did not feel like there was an ethics violation on the part of any member of the Department and that the issue had been addressed. She stated that the disciplinary report was attached to her complaint. She also pointed out that her son is not a minor child but is a legal adult.

Mr. Moffett requested that Ms. Fries recount for the Board what happened at the scene. Ms. Fries explained that when they pulled up on the scene, they realized it was not a broken down vehicle and he had not run out of gas. She explained that she did not know the circumstances from the original phone call when she asked. She explained that the officer approached them and stated that her son had been stopped initially for making an illegal left turn out of Northwood Drive. She stated that the officer explained that her son had failed the field sobriety test. Some discussion followed and the officer asked if they wanted to take him home or did they want him to go to jail. She explained that she stated that the officer had put her in a horrible position and she wished she had not gotten the call. She stated that she told the officer to never call again.

Mr. Moffett clarified that it was Ms. Fries' son that called. She stated that was correct and that if he had stated that he was in trouble with the police, she did not know if she would have come to the scene. She stated that they get calls quite often from her son for a car broken down or running out of gas. Mr. Moffett asked if it was unusual to receive a call from him. She stated that it was not. She stated that she did not want to leave him on the street corner. She explained that they have had some issues with him in the past.

She stated that her husband spoke with the officer too but she can not remember everything that was said. She stated that she remembered stating that she would rather take him home but this is a horrible position. She can not remember which of them stated that they would take him home. It was 2:30 in the morning. She stated that her son got in the car with her husband and she took her son's friend home in his car and then met her son and husband at home.

Mr. Moffett questioned if Ms. Fries asked the officer if she could take her son home or if she had told the officer she was taking him home upon arrival at the scene. Ms. Fries stated that she did not. She was asked if she wanted to take her son home.

Acting Chairman Langlais questioned if she knew when she received the phone call that her son was under arrest. She stated that she did not. Mr. Langlais questioned if there was an agreement between her and Ofc. Johnson for a return favor. Ms. Fries stated that there was not.

Mr. Moffett questioned if there was any promise made to Ofc. Johnson that if he would let her son go, that she would do something for him in the future. Ms. Fries stated that there was not. Mr. Moffett clarified that there was no money, thing, favor, loan or promise of any kind between Ms. Fries and Ofc. Johnson. Ms. Fries stated that was correct.

Mr. Maddrey questioned if Ms. Fries thought Ofc. Johnson would do the same thing for a parent if they had not been a Councilmember. Ms. Fries stated that she could not speak for him. She stated that it has been done in the past by other officers. She stated that she did not know about the Sandy Springs Police Department. This is the first incident so she could not speak for him.

Acting Chairman Langlais questioned if Ms. Fries knew her son was under arrest when she was given the option to take him home. Ms. Fries stated that she did not know if he was under arrest. Mr. Moffett stated that it is a technical term. Ms. Fries stated that he was in the back of the car and was handcuffed. She stated that all she knew was that her son was in the back of a police car, it was 2:30 in the morning and she was on I-285.

Mr. Moffett clarified that she was unaware that her son had been involved with the police until she arrived. Ms. Fries explained that her son woke her from a dead sleep and said either come get me or come get the car. She stated that all she knew was that she had to get up and get her husband up and go. She stated that she asked her son if he was all right. She stated that he said he was fine and everything was all right.

Mr. Moffett clarified that Ms. Fries had told Ofc. Johnson that he had put her in a bad situation. Ms. Fries stated that she had told Ofc. Johnson several times that she wished she was not in that position.

Ms. McCord questioned if Ms. Fries meant being in the position as a parent or as a councilmember. Ms. Fries stated both. That was an awkward position to be in. She stated that standing there, she felt like she was doing this to him.

Acting Chairman Langlais questioned if Ms. Fries felt that she had any choices. Ms. Fries stated that she felt her choices were to look her son in the eye and send him off to jail or she could take him home. She stated that she did not want to make that decision.

Mr. Moffett questioned if after making the decision to take her son home, did she know if he would still be charged with some crime at that point. She stated that was correct.

Mr. Isenberg stated that as a parent of two grown children, he could possibly understand. He questioned if Ms. Fries gave any consideration to the possibility of her son being taken into custody. She stated that was the awkward position she was put in and with the recent history it made the decision very difficult as a mother. She stated that it was almost overwhelming.

Mr. Maddrey questioned if Ms. Fries was addressed as Councilmember Fries. Ms. Fries stated that she did not remember. Mr. Maddrey questioned if the officer knew she was a councilmember. Ms. Fries stated that once she got out of the car he must have realized it.

Ms. McCord clarified that Ms. Fries' son told the officer his mother was a councilmember. Ms. Fries stated that she understood that to have happened but she was unaware of when that took place.

Acting Chairman Langlais questioned if there were any further questions for this witness. There were none.

Acting Chairman Langlais questioned if anyone wanted to call any other witnesses. Mr. Maddrey requested to call Police Chief Gene Wilson. City Clerk Rowland administered the oath.

Mr. Maddrey questioned if it was normal for parents to be given an option to have their child go to jail or go home. Mr. Maddrey questioned if releasing Mr. Fries voided any arrest. Chief Wilson stated that it did. He stated that a judge would probably not sign a warrant once someone was let go without giving them an intoximeter test or blood test or having them refuse the tests.

Mr. Maddrey questioned if this happened occasionally. Chief Wilson stated that the officers have discretion and many times that discretion will be tempered by the attitude of the person and by the amount of alcohol the officers believes the person has consumed.

Mr. Moffett questioned what discipline Ofc. Johnson received for this. Chief Wilson stated that it was investigated and found to be in violation of the rules and regulations of the department. Chief Wilson stated that Ofc. Johnson's

rank was reduced from a specialized officer to a senior officer; he was suspended for three days; and he was moved out of a specialized unit. Ofc. Lapides, who was aware of the incident, received similar discipline.

Mr. Moffett questioned if after those reprimands were handed down, the department is more aware of how to deal with this type of situation. Chief Wilson stated that they were. He explained that under normal circumstances, someone with 0.16 blood alcohol content would go to jail. There are some circumstances in which an officer might not make that arrest. Chief Wilson stated that Ofc. Johnson did not know that the man was a councilmember's relative until after the phone call was made. He stated that Ofc. Johnson mispronounced Mr. Fries' name on several occasions. Chief Wilson stated that he does not believe that Ofc. Johnson knew until the phone call was made that he was dealing with a councilmember's relative.

Acting Chairman Langlais questioned if there were any further questions for this witness. There were none.

Acting Chairman Langlais questioned if the Board wanted to call any further witnesses. None were called.

Acting Chairman Langlais questioned if the Fries' had anything further to add. Ms. Fries stated that they did not.

Acting Chairman Langlais stated that having heard the testimony of witnesses and reviewing the evidence in this record, he is of the opinion that there has been no violation of the ordinance.

City Attorney Willard stated that the hearing should be concluded prior to discussion.

Motion and Vote: Mr. Langlais moved to close the hearing at this time. Ms. McCord seconded the motion. The motion carried unanimously.

Acting Chairman Langlais relinquished his chair to Mr. Maddrey.

Motion: Mr. Langlais moved that there be a finding that there has been no violation of the ethics ordinance and that the complaint against Ms. Fries be dismissed. Ms. McCord seconded the motion.

Discussion on the motion: Mr. Langlais stated that it was his opinion that the definition of a gift assumes there is some agreement to return a favor of equal or greater value. He stated that he did not see that in this case. He stated that when Ms. Fries was called, she was not aware that her son had been arrested and there is indication in the record that had she known, she would not have appeared on the scene. She did not ask for any favors to be conferred upon her. There is no indication in the record that she used her position as a councilmember to elicit any favors. He stated that she was put in an awkward position and he does not believe she was in a position to refuse this offer. Mr. Langlais pointed out that this incident was self-reported and she has been cooperative throughout the entire process.

Mr. Moffett stated that there is no question that Ms. Fries did not violate Sec. 2-118(a)6 of the ordinance or any other part of the ordinance based on the testimony. He stated that Ms. Fries acted like any parent would act in a similar circumstance. He stated that it was 2:30 in the morning and everyone on this Board would have taken their son home. He complemented Ms. Fries on her presentation and on the fact that she had the courage to file this complaint against herself. This shows that she is upholding the highest tradition of the ethics ordinance. He is in support of dismissing this complaint on all grounds including Sec. 2-118(a)6.

Chairman Maddrey stated that from Chief Wilson's testimony, he does not think young Mr. Fries' parents would have been given custody in standard police procedure. He further stated that he does not think that Ms. Fries realized that given the option of going to jail or going home was a legal issue but an issue of what is the best thing to do. He stated that he does believe there was a violation, but he does not believe Ms. Fries understood it would be a violation. She stated that he is inclined to agree with the motion but for different reasons.

Vote: The motion carried unanimously.

Mr. Langlais moved that the hearing be adjourned. Ms. Isenberg seconded the motion. The motion carried unanimously.

Chairman Maddrey reconvened the Special called Board meeting.

Motion and Vote : Mr. Moffett moved that this Board conclude its inquiry into the Fries complaint including possible allegations of violations of the ordinance on behalf of any police officer of the City of Sandy Springs bases upon the testimony heard before the Board today from the Police Chief that very clearly established what disciplinary procedures were undertaken against various members of the Police Department and for the Board to continue its deliberations to make a determination as to whether or not it would be an ethics ordinance violation would not be appropriate and in fact would be detrimental to, not only the Police Department, but to the future operations of this Board. He further moved that any other allegations of impropriety have been resolved completely and that this Board conclude its deliberations of this complaint. Mr. Langlais seconded the motion. The motion carried unanimously.

Motion and Vote: Mr. Moffett moved to recommend that anything in the files of any police officers that pertains to any ethical violation, any letter, any comment, or anything from the City Attorney regarding the Fries' complaint be expunged from the record. Mr. Langlais seconded the motion. The motion carried unanimously.

City Attorney Willard stated that nothing had gone into their files.

Motion: Mr. Langlais moved that the Board recommend to the City Council that the Ethics Ordinance be revised to exclude the police department, the fire department, and any other similarly situated departments on the grounds that the procedures in place that adequately address potential ethics violations within their department and that similar to the same reasons judicial bodies were not included in the ordinance, those reasons exist here. Ms. McCord seconded the motion.

Chairman Maddrey stated that this comes under the committee along with any other changes that the Board wishes to recommend to the Council.

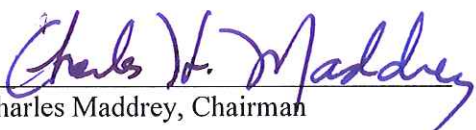
Mr. Langlais moved to table his motion to be brought forward at the next meeting.


Mr. Isenberg commended the police chief for the way he handled this situation.

Mr. Maddrey stated that he would be calling a special called meeting in the next few weeks to cover the committee issues.

Adjournment

Mr. Moffett moved to adjourn the meeting. Mr. Langlais seconded the motion. The motion carried unanimously. The meeting adjourned at 11:00 a.m.


Charles Maddrey, Chairman


Christina Rowland, City Clerk